



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/156166

PRELIMINARY RECITALS

Pursuant to a petition filed March 17, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Waukesha County Health and Human Services in regard to Child Care, a telephonic hearing was held on May 06, 2014.

The issue for determination is whether the petitioner is eligible for Child Care Benefits (CCB) for November and December 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On October 18, 2013 the agency issued a notice of decision to petitioner stating that effective October 31, 2013 her CCB would end because she had not completed a review for the benefits. Exhibit 2; see also Exhibit 3.

3. On November 4, 2013 the agency processed a new application for CCB. See Exhibit 5.
4. On November 5, 2013 the agency issued a request for verification of proof of residency, employment, rental obligation and informed her that she needed to sign the application. See Exhibit 4. The information was due back to the agency by November 14, 2013.
5. On November 5, 2013 the agency also issued to petitioner a summary of the CCB application and a signature page for completion, and informed petitioner that she must sign and return the signature page to the agency by November 13, 2013. See Exhibit 5.
6. The petitioner did not provide the requested information by the deadline.
7. On November 18, 2013 the agency issued a notice of decision to petitioner stating that her CCB was denied effective November 1, 2013 because she did not provide the requested verification. See Exhibit 6.
8. On January 15, 2014 petitioner reapplied for CCB and was approved for CCB for January and ongoing.

DISCUSSION

Wis. Stat. §49.155 authorizes the Department of Children and Families (DCF) to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. The DCF has a Child Care Policy Manual (Manual) that provides the specific policies for the program. See <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>. A parent is eligible for child care if it is necessary for him or her to work, attend school, or to attend W-2 activities. Wis. Stat. §49.155(1m)(a). In addition to such nonfinancial requirements, the child care subsidy also has financial requirements, which includes meeting the income limit guidelines.

The Wisconsin Works or County/Tribal Human Service agency may request any information that is necessary and appropriate in order to make a correct eligibility decision. See *Manual* §1.7.1. The eligibility determining agency must verify the level of income and residence. See *Manual* §1.7.2. The Wisconsin Shares child care assistance applicant has the primary responsibility for providing verification and resolving questionable information. See *Manual* §1.7.3. The applicant must be informed in writing of the verification items that are needed along with a due date. See *Manual* §1.7.4. The applicant has seven (7) business days from the date the verification request is made to submit the needed verification to the Wisconsin Works or County/Tribal Human services agency. If extenuating circumstances exist that make the verification requirements unduly burdensome, the Wisconsin Works or County/Tribal agencies may extend the verification due date to thirty (30) calendar days from the applicant filing date. See *Manual* §1.7.5. If the applicant is able to produce the information, but refuses or fails to do so, no eligibility shall exist. If the applicant fails or refuses to provide verification, the Wisconsin Shares child care assistance application may be denied or the case may be closed. No eligibility shall exist when an individual has the power to produce required verification, but refuses or fails to do so. See *Manual* §1.7.7. Moreover, when processing an application for CCB, the agency is instructed as follows:

If the verification items, including the Application Summary page, have not been returned by the due date (7 business days from the date of the interview) the agency has discretion to complete CWW entries to fail eligibility in CWW immediately, or may wait until the 30th day. However, if on the 30th day from the filing date the verification items have not been returned, the agency should complete CWW verification items with the NV code to fail the Child Care AG. Agencies should also consider turnaround time at the CDPU (or MDPU in Milwaukee) for internal routing delays in deciding when to take action that fails the Child Care AG.

See *Manual* §1.3.2.

In this case the agency followed the policy in terms of requesting the required information within 7 days. The petitioner failed to provide all of the requested information by the due date, and even if the agency had used its discretion to wait until the 30th day, the information was still not provided within that timeframe. Petitioner testified that she believed the information had all been returned to the agency but had no collateral evidence to back that up. Given this, I must find that the agency met its burden to show that it correctly denied her CCB effective November 1, 2013.

As for the December CCB, I cannot award these benefits her case was closed and because no application was made to reopen the case in December. Her later application was not made until January 2014. The agency can backdate eligibility only to the first of the month of the application filing date, which was January. See *Manual* §1.3.6.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

Petitioner is not eligible for CCB for November and December 2013.

THEREFORE, it is

ORDERED

The petition for review is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of June, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 24, 2014.

Waukesha County Health and Human Services
Child Care Benefits